C?NADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1269

Heard at Montreal, Thursday, July 12, 1984

Concerning

CANADIAN PACIFIC LIMITED (CP RAIL)
(Pacific Region)

and

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

DISPUTE:

Mr. P. C. Heal was awarded the position of Tie Crane Operator on the B.C. Tie Gang No. 1 on the basis that he had previous experience and was qualified. He reported to the gang work location (Faulder, B.C.) on Monday, September 19th, 1983, and commenced work on September 20th. Shortly after commencing work he was removed from the Tie Crane because he was determined to be unqualified. On September 21st, Roadmaster White advised the grievor to return to his former position of Trackman at Rogers, B.C.

JOINT STATEMENT OF ISSUE:

The Union contends that:

1. Mr. P. Heal was not accorded sufficient time to prove his capability as Tie Crane Operator.

2. Mr. Heal be compensated at his rate of pay for September 22nd, 1983.

3. His seniority as Tie Crane Operator be restored and be allowed the opportunity to prove his capabilities.

The Company declines the Union's contention and denies payment.

FOR THE BROTHERHOOD:	FOR THE COMPANY:
(SGD.) H. J. THIESSEN	(SGD.) L. A. HILL
System Federation	General Manager,
General Chairman	Operation and Maintenance

There appeared on behalf of the Company:

F. R. Shreenan	- Supervisor, Labour Relations, CPR, Vancouver
D. N. McFarlane	- Asst. Supervisor, Labour Relations, CPR, Vancouver
R. A. Colquhoun	- Labour Relations Officer, CPR, Montreal
J. L. White	- Coordinator, Work Programs, Pacific Region, CPR, Vancouver

And on behalf of the Brotherhood:

H. J. Thiessen	- System Federation General Chairman, BMWE, Ottawa
L. DiMassimo	- Federation General Chairman, BMWE, Montreal
R. Y. Gaudreau	- Vice-President, BMWE, Ottawa

AWARD OF THE ARBITRATOR

The issue in this case pertains to whether on September 20, 1983, Mr. P. C. Heal was properly disqualified from the position of Tie Crane Operator on B.C. Tie Gang No. 1. The grievor, in response to an advertised bulletin, was awarded the position on Septem?er 14, 1983. The fact that was decisive in his being given the position was the grievor's representation to the company that he had past experience in the operation of a tie crane (in 1977) prior to his securing employment.

On the basis of that representation the company concluded that Mr. Heal was qualified and had the requisite skills to discharge the duties of the position. No sooner had the grievor commenced work on the tie crane on September 20, 1983, that it became apparant to his Supervisor, Roadmaster White, that the grievor had absolutely no appreciation of how to operate the vehicle. Indeed, although the assistance extended Mr. Heal by Mr. Cote may have appeared suspect, the grievor encountered immediate difficulty in starting up the crane and in handling the vehicle's various pedals and levers. Mr. White quickly concluded that the grievor was not qualified to operate the crane. For the purposes of the grievor's own safety and that of the crew, Roadmaster White removed Mr. Heal from the vehicle. The grievor's own admission appears to have supported Mr. White's conclusions:

> "I then asked Mr. Heal to shut down the machine and advised him that I was very disappointed to find that he had no previous experience on the tie crane. He did not dispute this statement and said that he would do any other work on the gang provided he could stay and spend a few minutes every day to learn the operation of the tie crane. I told him I was pleased to have his co-operation but the bid called for a qualified operator for the tie crane."

I am in complete agreement with the company's position that CROA Case #1149 has absolutely no relevance to this case. I am satisfied, in the absence of contradicition, that Mr. Heal misstated his qualifications to the company in his having previous experience in the operation of a tie crane. On the basis of that representation he was awarded the position. In my view Mr. White was not required to extend to an employee, who was patently unqualified for the position, an opportunity to famzliarize himself to a job that he had secured by inappropriate means. In my view, quite frankly, this is not a situation where an employee has been determined to be qualified for a position in response to a bulletin and who, later, after a

reasonable familiarization period, is disqualified for his alleged unsuitability. Rather, Mr. Heal's situation represents a circumstance where he was never qualified in the first place. Nor by virtue of his incorrect representation to the company should he have been conferred the advantage of a familiarization period for which he was not entitled.

The grievor's own lack of qualification was demonstrated by the trade union's representative at the hearing. At that time Mr. Thiessen acknowledged that the grievor had no experience in the operation of a diesel unit. His experience, if it existed at all, pertained to a gasoline vehicle. The two vehicles, from an operative sense, are quite distinct. A person qualified to operate the latter may very well not be qualified to operate the former.

But irrespective of that distinction, I have had no reason adduced before me to warrant the conclusion that Mr. White improper denied the grievor his rights under the collective agreement. As aforesaid, the information before me demonstrated that the grievor should not have been awarded the Tie Crane Operator's position in the first place

Accordingly the grievance is denied.

DAVID H
ARBITRATOR.